

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 662.

COMPAGNIE GENERALE TRANSATLANTIQUE,
APPELLANT,

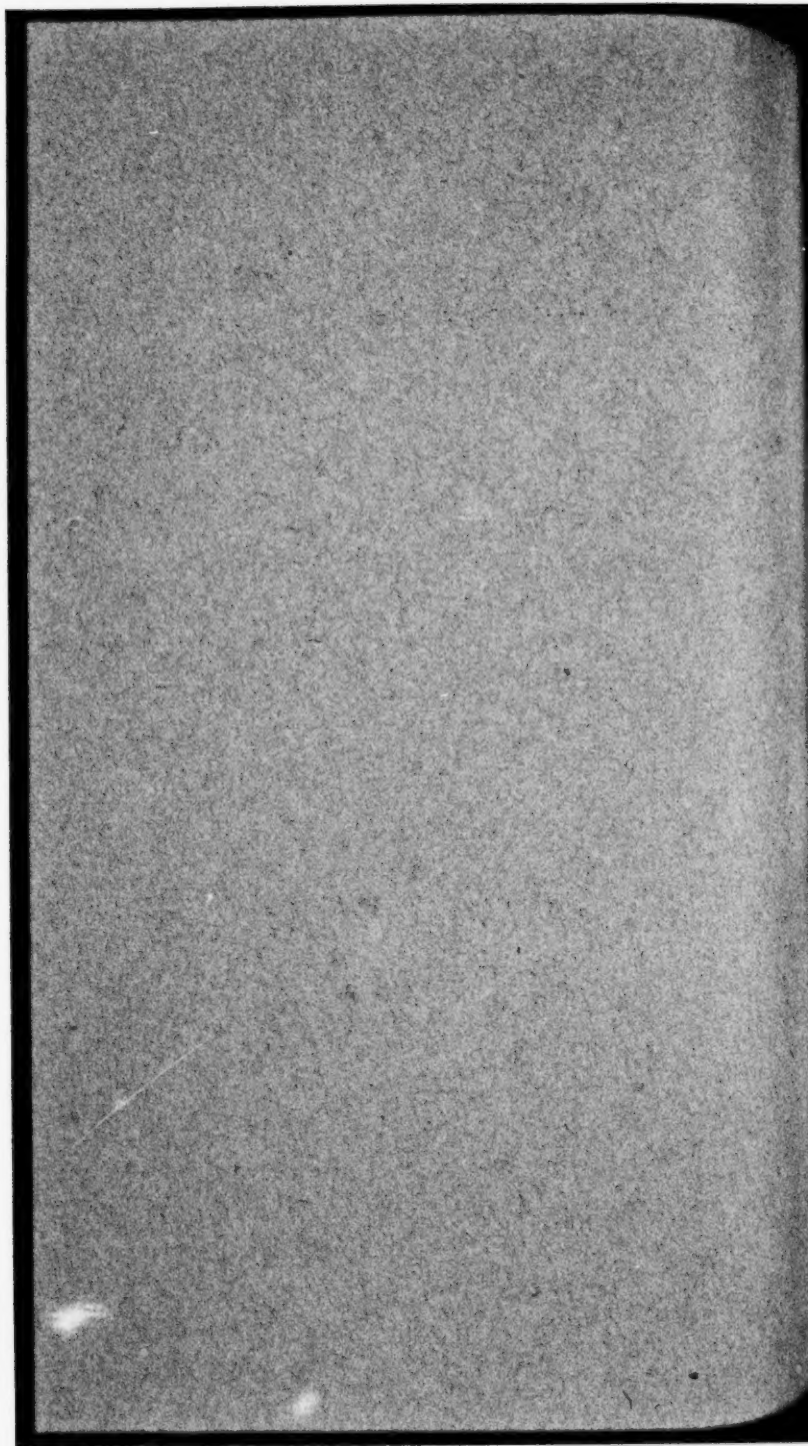
vs.

ANDREW W. MELLON, SECRETARY OF THE TREASURY
OF THE UNITED STATES, *ET AL.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 25, 1922.

(29,212)



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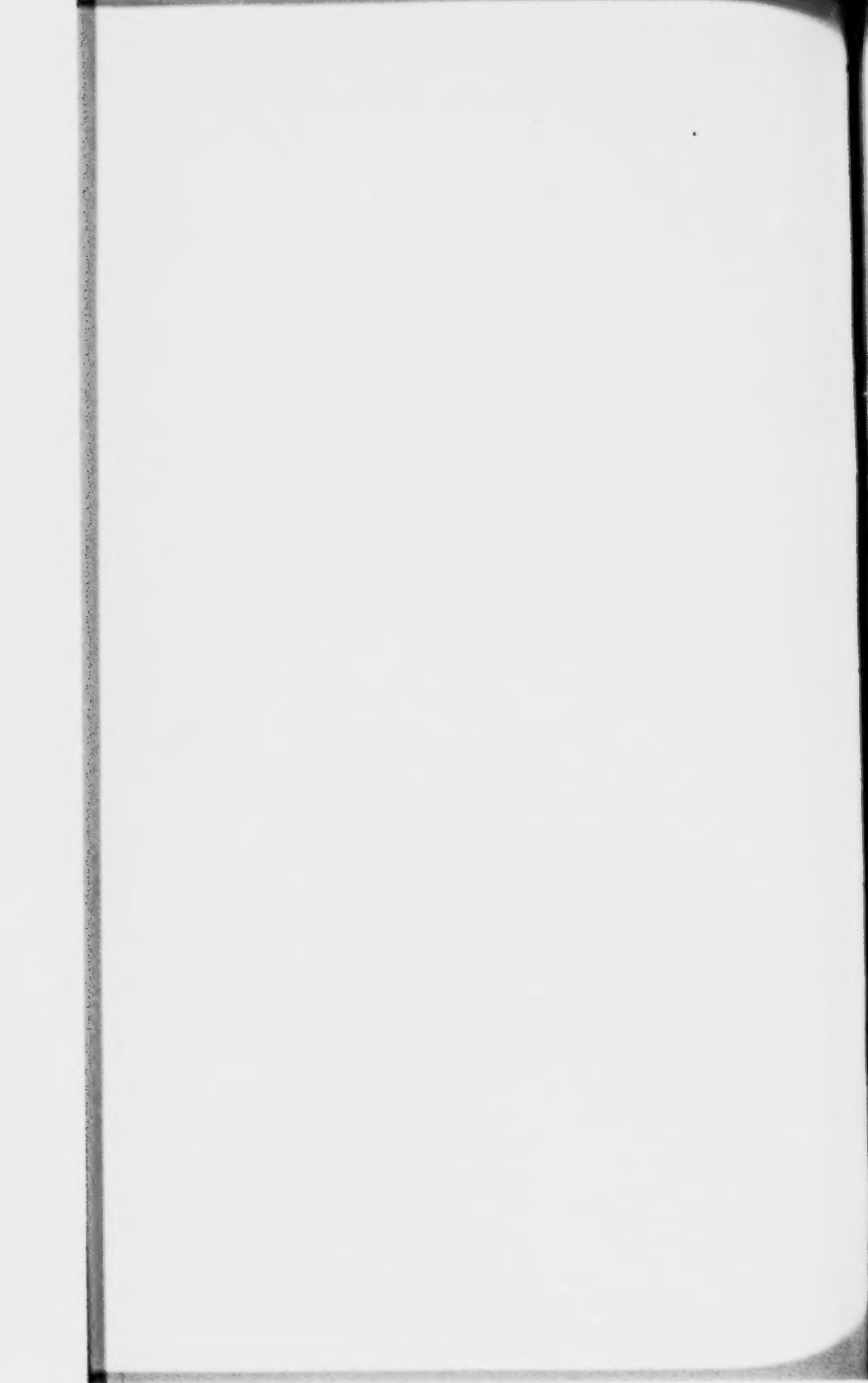
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INDEX.

	Original.	Print.
Record from the district court of the United States for the southern district of New York.....	1	1
Summons	1	1
Notice of appearance and demand.....	3	1
Order to show cause.....	4	2
Amended bill of complaint.....	6	3
Schedule A—T. D. 38218, regulations as to sea stores— liquors	19	9
Schedule B—T. D. 38248, regulations as to sea stores— liquors	21	10
Answer	23	11
Opinion, Hand, J.....	31	15
Final decree.....	48	23
Petition for and order allowing appeal.....	50	24
Assignments of error.....	52	24
Citation	56	26
Stipulation as to transcript.....	58	27
Clerk's certificate.....	60	27



1 The President of the United States of America to Andrew W. Mellon, Secretary of the Treasury of the United States; Henry C. Stuart, Acting Collector of Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by Compagnie Generale Transatlantique, and to further do and receive what the said Court shall have considered in this behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars (\$250).

Witness, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 14th day of October, in the year One Thousand Nine Hundred and twenty-two, and of the Independence of the United States the One Hundred and Forty-seventh.

ALEX GILCHRIST, JR.,
Clerk.

JOSEPH P. NOLAN,
Complainant's Sol'r.

The defendants are required to file their answer or other defense in the above cause in the Clerk's Office on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken pro confesso.

ALEX GILCHRIST, JR.,
Clerk.

U. S. District Court, Southern District of New York.

E. 25/14.

COMPAGNIE GENERALE TRANSATLANTIQUE, Complainant,
versus

ANDREW W. MELLON, Secretary of the Treasury of the United States; Henry C. Stuart, Acting Collector of the Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York.

Notice of Appearance and Demand.

You will please take notice that I am retained by, and appear as attorney for, the Defendants in this action, and demand service of a copy of the complaint and all papers in this action upon me, at my

office in the United States Court and Post Office Building, in the City of New York, Borough of Manhattan.

Yours,

WILLIAM HAYWARD,
*United States Attorney,
Attorney for Defendant.*

New York, October 16, 1922.

To Joseph P. Nolan, Esq., 25 Broad Street, Attorney for Plaintiff.

- 4 In the District Court of the United States for the Southern District of New York.

In Equity.

COMPAGNIE GENERALE TRANSATLANTIQUE, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States; Henry C. Stuart, Acting Collector of Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Defendents.

On reading the annexed Bill of Complaint, let the defendants herein show cause before this Court at a Term thereof for the hearing of motions to be held at Room 237 the Post Office Building, Borough of Manhattan, City of New York, on the 17th day of October, 1922, at 10:30 a. m. o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made restraining the defendants, their agents, servants and subordinates, during the pendency of this suit, from seizing, disturbing, removing or in any way interfering with intoxicating beverages, liquors or wines or any of them carried on complainant's ships as ship's stores, as more particularly set forth in the bill of Complaint herein, and restraining the defendants, their agents, servants and subordinates, during the pendency of this suit, from seizing, disturbing or in any way interfering with complainant's said ships by reason of the carriage thereon of said intoxicating beverages, liquors and wines as such ship's stores, and why the complainants should not have such other and further relief as may be just.

Sufficient cause appearing, service of a copy of this order on the defendants on or before the — day of October, 1922, shall be sufficient service.

LEARNED HAND,
United States District Judge.

6 In the District Court of the United States for the Southern District of New York.

In Equity.

COMPAGNIE GENERALE TRANSATLANTIQUE, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States;
Henry C. Stuart, Acting Collector of Customs for the Port of New
York, and Ralph A. Day, Federal Prohibition Director for the
State of New York, Defendants.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, Sitting in Equity:

The Complainant, Compagnie Generale Transatlantique, a Corporation, brings this its Amended Bill of Complaint against the above-named defendants, and respectfully shows unto this Honorable Court as follows:

First. The Complainant, Compagnie Generale Transatlantique, is a Corporation duly organized and existing under the laws of the Republic of France, with its principal place of business in Paris, France.

Second. Complainant is informed and verily believes, and, therefore, alleges on information and belief:

The defendant Andrew W. Mellon is Secretary of the Treasury of the United States, and *that* said defendant is, and his subordinates are, by law charged with the duty of enforcing the terms and provisions of the Acts of Congress passed under the authority of the Eighteenth Amendment to the Constitution of the United States and the making of Regulations *and* promulgated for the purpose of enforcing such Acts of Congress.

The defendant Henry C. Stuart is a subordinate of the said Secretary of the Treasury, and is Acting Collector of Customs for the port of New York, and said defendant is by law charged with the duty of enforcing the terms and the provisions of the Acts of Congress and the regulations and decisions of the Secretary of the Treasury, which from time to time may be promulgated, within that portion of the Port of New York wherein the complainant desires to bring its vessels equipped with certain sea stores as hereinafter set forth.

The defendant Ralph A. Day is a subordinate of the said Secretary of the Treasury, and is the prohibition Director for the State of New York, which State embraces that portion of the Port of New York wherein the complainant desires to bring its vessels equipped as aforesaid, and said defendant is by law charged with the duty of enforcing the terms and the provisions of the Acts of Congress passed under authority of the Eighteenth Amendment

to the Constitution of the United States, and regulations of Executive Departments of the United States Government promulgated for the enforcement of such Acts of Congress.

Third. This is a suit of a civil nature, arising under the Constitution, Laws and Treaties of the United States. The matter in controversy exceeds the sum of Three Thousand Dollars (\$3,000.00) in value, exclusive of interest and costs.

Fourth. Complainant was incorporated under the laws of the Republic of France for the purpose of carrying on a steamship business of transporting, as common carriers, passengers and cargo for hire on the high seas, and in carrying the government mails between France and the United States, and, in transacting such business, the complainant maintains and operates fleets of steamships which ply between ports of the Republic of France, and other ports of Europe, and between ports in the Republic of France and the United States.

All of said steamships are French built vessels, and registered in France and not in the United States, and fly the French flag. Twenty of such ships carry passengers. Said ships are worth many millions of dollars, and they ply regularly and frequently
 9 between European ports and the Port of New York, more especially between ports of France and the United States. Complainant leases piers known as piers Numbers 57 and 74 North River, New York City.

Fifth. The crews operating complainant's vessels, including those carrying passengers and cargo and those carrying cargo alone, are made up almost entirely of citizens of countries other than the United States, under the laws of which countries the use of alcoholic liquors for beverage purposes is not prohibited and by whose customs the use of alcoholic liquors for beverage purposes is so widespread that complainant believes it would experience the greatest difficulty in obtaining adequate crews to operate its vessels running to the United States if *they* were prohibited from furnishing a usual and reasonable amount of liquor to members of the crews.

None of the intoxicating liquors so kept as sea stores for reasonable use of passengers and crew have been manufactured, sold or transported within, imported into, or exported from the United States; any territory subject to the jurisdiction of the United States. All wines and other intoxicating liquors kept as sea stores on complainant's vessels, as aforesaid, have been legally acquired.

Sixth. The compensation received by complainant for the carriage of passengers amounts in the aggregate to many millions of
 10 dollars annually, including the years 1920 and 1921.

Among the passenger vessels regularly crossing the North Atlantic from European ports are many which land at Canadian ports and, if your complainant is prohibited from furnishing its crew and passengers with alcoholic beverages, a large number of passengers who would otherwise have patronized complainant's ships, will patronize lines landing at Canadian ports.

The prohibition of the use of alcoholic liquors on complainant's vessels as sea stores, for the reasonable use of crew and passengers, would cause your complainant great pecuniary loss by reason of the difficulty of obtaining crews, and would cause a great loss of receipts from passenger business, and will involve irreparable damage to your complainant, in that it will destroy a considerable part of its business and render a considerable part of its equipment useless and cause a loss of its profits.

Seventh. That your complainant is a corporation organized and existing under the laws of the Republic of France, and its principal offices are maintained in France, and the home ports of all of its said ships are French ports, and all of its ships carry the French flag, and are subject to the laws of the Republic of France.

That by the laws of the Republic of France your complainant is required to furnish daily to each member of the crew of each
11 of its said steamships one-half liter of wine of alcoholic content per day, and to each stoker on said steamships one liter of wine of alcoholic content per day.

Eighth. That the said law of the Republic of France is, by operation of law, written into the contract of employment of each member of the crew of each of such steamships, and the said allowance of wine is part of the hire paid to each member of the crew under the terms of the law of the Republic of France.

Ninth. And your complainant further alleges that by the said law of the Republic of France your complainant is not permitted to employ, as members of the crew of each of such steamships, more than one-third of the total number of the crew of other nationalities than that of France.

Tenth. That the said law of the Republic of France was in full force and effect at the time the National Prohibition Act of October 28th, 1919, was adopted, and is now in full force and effect throughout the Republic of France, and was, and is, binding upon your complainant, its officers, agents and employees, including the captain and officers of each of your complainant's said ships, and your complainant alleges that the failure of your complainant, its officers, agents and employees to obey the said law of the Republic of France
2 would result in the subjecting of your complainant, its officers, agents and employees, to penalties enforceable against it under the laws of the Republic of France, and would result in the inability of your complainant to use and operate each of its said steamships.

Eleventh. Since the adoption of the so-called National Prohibition Act on October 28, 1919, complainant's ships have been permitted freely to go and come in the Port of New York, and to carry intoxicating liquors for beverage purposes as sea stores for crew and passengers, pursuant to the Regulations of the Secretary of the Treasury hereto annexed and marked "Schedule A" and "Schedule B," and reference thereto is prayed.

In reliance upon, and under the authority of, the above-mentioned Treasury Decision, and the Regulations promulgated in connection therewith, and the procedure always followed as above described, complainant, in good faith, purchased, in foreign ports, and now has on board its vessels on the high seas, bound for the United States, as sea stores, quantities of intoxicating liquor of a value in excess of Three Thousand Dollars (\$3,000.00).

Twelfth. All of the alcoholic liquors carried as such sea stores on complainant's vessels are produced and manufactured in countries other than the United States, or territory subject to its jurisdiction. All such liquor for sea stores is taken on board complainant's vessels at European ports, and no part of such liquors is intended to be landed in the United States.

13 Thirteenth. Complainant is informed and verily believes, and, therefore, alleges that on or about the sixth day of October, 1922, the Attorney General of the United States rendered a ruling, or opinion, in which, among other things, he ruled that foreign ships carrying intoxicating beverage liquor as ships' stores, within the three-mile limit of our shores, are violating the provisions of the National Prohibition Act prohibiting possession or transportation of intoxicating liquors for beverage purposes, and that thereafter the President of the United States directed the defendant, the Secretary of the Treasury, to proceed to the formulation of regulations for the enforcement of such ruling with respect to foreign ships.

Complainant is informed and believes that the defendant, the Secretary of the Treasury, or officials of his Department, acting under his direction, are proceeding to formulate regulations to prevent the carriage of all intoxicating liquors for beverage purposes as sea stores for crew and passengers on foreign vessels entering ports of the United States, and threaten to enforce said Prohibition Act as interpreted by the Attorney General.

Fourteenth. Complainant is advised by counsel, and verily believes, that the aforesaid ruling by the Attorney General in respect to foreign ships carrying intoxicating beverage liquors as ships' stores for crew and passengers, and any regulations formulated by the Secretary of the Treasury for the enforcement of such ruling are, and will be, unauthorized and void because neither the Eighteenth Amendment, nor the National Prohibition Act, prohibit the carriage of such liquors as such sea stores for crew and passengers, and an interference with the carriage of such sea stores would, therefore, violate complainant's rights under existing treaties between the United States and France, and otherwise, and also would deprive complainant of its property without due process of law.

Fifteenth. Complainant is advised by counsel, and verily believes, that if the interpretation placed upon the National Prohibition Act by the opinion of the Attorney General, as aforesaid, is correct, it renders said act unconstitutional and void, for the reason that the National Prohibition Act was adopted by the Congress in reliance upon, and in the exercise of, the powers given the Congress by the

Eighteenth Amendment to the Constitution of the United States, and that if the National Prohibition Act purports to make possession anything more than a presumption of a violation of the said act, it is unconstitutional.

Sixteenth. Complainant alleges that the defendant Andrew W. Mellon, or his subordinates, are preparing regulations, and that pursuant to said opinion of the Attorney General or such regulations, the defendant Andrew W. Mellon, as Secretary of the Treasury, and the defendants Henry C. Stuart and Ralph A. Day, are threatening, notwithstanding the fact that the interpretation of the

15 Act of Congress, known as the National Prohibition Act, by the the Attorney General is erroneous, unauthorized and void, and that it exceeds the authority conferred upon the Secretary of the Treasury by the provisions of said act, and notwithstanding the fact that said National Prohibition Act, if it purports to prohibit the carriage of said alcoholic beverages as sea stores for crew and passengers, is unconstitutional and void for the reasons hereinabove stated, it is, nevertheless, the intent and threat of the defendants herein to seize said alcoholic liquors now constituting sea stores on complainant's vessels (some of which are now on the high seas bound for the Port of New York), and to enforce against the complainant, its officers, agents and servants, various pains and penalties, including fines and imprisonment, and various forfeiture of property provided by the Acts of Congress, and regulations, and thus involve the complainant, its officers, agents and servants in numerous suits, and by such threats to prevent complainant, its employes and servants, from carrying out its contract in the Port of New York, and thus deprive the complainant of its business; all to the irreparable damage of complainant, and such injury and damage would be incapable of admeasurement and adjudication in an action at law. Furthermore, complainant would be involved in numerous suits if it were forced to bring an action at law to relieve its employees and property from such penalty and forfeiture, which contract, under the laws of France, as above set forth, must provide for the furnishing of wines as aforesaid

16 to the said crew. That unless the complainant can immediately procure from this Honorable Court relief in the premises, that there will be, in that event, a cessation of complainant's business for an indefinite and probably considerable time; such cessation of business will involve irreparable damage to complainant in that it will destroy a considerable part of its business, and render a considerable part of its equipment useless.

Forasmuch, therefore, as complainant is without remedy in the premises, except in a court of equity, and to the end that it may obtain from this Honorable Court the relief to which it is entitled, it respectfully prays that the above named defendants and each of them be directed to make a full, true and perfect answer to this bill of complaint but not under oath, an answer under oath being expressly waived, and that said defendants, their agents, servants, subordinates and employes, and each and every one of them, be enjoined and restrained from in any manner enforcing or attempting

to enforce or cause to be enforced against the complainant, its officers, servants and employes, or any of them, any of the pains, penalties or forfeitures provided in and by the aforesaid Acts of Congress, or any rules or regulations of the Secretary of the Treasury, promulgated to carry into effect the said opinion of said Attorney General

and from arresting and prosecuting the complainant, its officers, agents, servants or employes, or any of them, or on account of any alleged violation by them, of the Eighteenth Amendment, or the National Prohibition Act, on the ground or claim that the carriage of said intoxicating liquors as aforesaid, as sea stores for crew and passengers, is contrary to law.

Complainant further prays that it be granted a restraining order and preliminary injunction pending the final hearing and decision of this cause whereby the defendants, their agents, servants, subordinates and employes, and each and every one of them be enjoined and restrained as heretofore prayed, and that upon the final hearing said injunction be made perpetual.

Complainant further prays that a writ of subpoena be issued hereon, directed to said defendants, commanding them on a day set, to appear and answer the amended bill of complaint herein.

COMPAGNIE GENERALE TRANSATLANTIQUE,

By OSCAR R. CAUCHOIS,
*Acting General Representative for
U. S. and Canada.*

JOSEPH P. NOLAN,
Solicitor for Complainant.

18 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Oscar R. Cauchois, being duly sworn, deposes and says:

That he is the Acting General Representative for the United States and Canada of the Compagnie General-Transatlantique, the complainant herein. That he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. That the sources of deponent's information and the grounds of his belief, as to all matters stated on information and belief, are statements made to him by employes of the complainant.

That the reason this verification is made by deponent and not by the complainant is that complainant is a foreign corporation, organized and existing under the laws of the Republic of France, and no officer or director thereof is within the State of New York, and deponent, as aforesaid, the Acting General Representative thereof and, therefore, makes this verification on its behalf.

That deponent is duly authorized to make the within complaint and generally to make any and all complaints, answers, claims, declarations, verifications and acts for said Compagnie Generale

Transatlantique in the premises that may be necessary for the transaction of its business herein.

OSCAR R. CAUCHOIS.

Sworn to before me this 18th day of October, 1922.

HUGH D. SMITH,
Notary Public.

Kings County 308.
Kings County Register 4126.
Certificate filed New York County 1168.
New York County Register 4105.

SCHEDULE A.

(Copy.)

(T. D. 38218.)

Sea Stores—Liquor.

Liquors properly listed as sea stores should be kept under seal while vessels are in port. Excessive or surplus quantities should be seized and forfeited.—Articles 106 and 107 of the Customs Regulations of 1915 as amended.

Treasury Department, December 11, 1919.

To Collectors of Customs and Others Concerned:

All liquors which are prohibited importation, but which are properly listed as sea stores on vessels arriving in ports of the United States, should be placed under seal by the boarding officer and kept sealed during the entire time of the vessel's stay in port, no part thereof to be removed from under seal for use by the crew at meals for any other purpose.

Excessive or surplus liquor stores are no longer dutiable, being prohibited importations, but are subject to seizure and forfeiture.

Liquors properly carried as sea stores may be returned to a foreign port on the vessel's changing from the foreign to the coasting trade, or may be transferred under supervision of the customs officers from a vessel in foreign trade, delayed in port for any cause, to another vessel belonging to the same Line or owner.

Articles 106 and 107 of the Customs Regulations of 1915 are amended accordingly.

(Signed)

JOUETT SHOUSE,
Assistant Secretary.

(99623.)

21

SCHEDULE B.

(Copy.)

(T. D. 38248.)

Sea Stores—Liquors.

Opinion of the Attorney General with respect to the practice under T. D. 38218 of sealing liquors listed as sea stores on vessels while in ports of the United States. Distinction made between American and foreign vessels. T. D. 38218 amended.

Treasury Department, January 27, 1920.

To Collectors of Customs and Others Concerned:

Attention is invited to the appended copy of an opinion rendered the Department by the Attorney-General with respect to the practice under T. D. 38218 of sealing liquors carried as sea stores on all vessels while in the ports of the United States, as indicated by the questions submitted to him.

Following the opinion of the Attorney-General the first paragraph of T. D. 38218 is hereby amended to read as follows:

22 All liquors which are prohibited importation, but which are properly listed as sea stores on American vessels arriving in ports of the United States, should be placed under seal by the Boarding Officer and kept sealed during the entire time of the vessel's stay in port, no part thereof to be removed from under seal for use by the crew at meals or for any other purposes. All such liquors on foreign vessels should be sealed on arrival of the vessel in port, and such portions thereof released from time to time for use by the officers and crew.

The other provisions of T. D. 38218 are not affected by the Attorney-General's opinion, and therefore remain without modification.

JOUETT SHOUSE,
Assistant Secretary.

(108377.)

23 In the District Court of the United States for the Southern District of New York.

COMPAGNIE GENERALE TRANSATLANTIQUE, Complainant,
against

ANDREW M. MELLON, Secretary of the Treasury of the United States; Henry C. Stuart, Acting Collector of Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Defendants.

Answer to Amended Bill of Complaint.

Now come the defendants herein and in answer to the amended bill of complaint by their attorney William Hayward, United States Attorney for the Southern District of New York, allege as follows:

First. Defendants move that the amended bill of complaint herein and divers parts thereof be dismissed, and assign the following grounds for this motion, namel:

1. The suit is in effect one against the United States and does not aver or show that the United States has consented to be sued herein.

2. The Court has no jurisdiction to grant the relief prayed for or any part thereof.

3. The bill does not present a cause of action in equity under the Constitution of the United States.

4. The bill does not disclose a cause of action equitable in its nature, civil in its character and arising under the Constitution of the United States.

5. The facts alleged in the bill are insufficient to constitute a valid cause of action in equity.

6. It appears from the bill that the complainant has a plain, adequate and complete remedy at law.

4 Second. In answer to the allegations set out in paragraph six of the complaint the defendants allege on information and belief that any difficulty which complainant might experience in obtaining adequate crews from among the nationals of countries in which the custom of the use of alcoholic liquors for beverage purposes is widespread would be readily obviated by the payment of higher wages to said crews. Defendants are further informed and believe that many of the vessels of the American merchant marine carry crews, a portion of whom come from nations accustomed to the use of alcoholic beverages and that the said American vessels have never had the least difficulty in obtaining adequate crews from the nationals of such countries at the same wages paid to American crews.

Third. Defendants deny the allegations contained in paragraph 14th of the amended bill of complaint that the ruling by the Attorney General referred to in said paragraph is and any regulations for the enforcement of such ruling are and will be unauthorized and void. Defendants further deny the allegation that such ruling and such regulations would violate complainant's rights under existing treaties between the United States, Great Britain and otherwise.

Fourth. Defendants deny the allegation contained in paragraph 15th of the amended bill of complaint that if the interpretation placed upon the National Prohibition Act by the opinion of the Attorney General is correct, it renders said act unconstitutional and void for the reason that the National Prohibition Act was adopted by the Congress in reliance upon, and in the exercise of, the powers given the Congress by the Eighteenth Amendment to the Constitution of the United States, and that if the National Prohibition Act
 25 purports to make possession anything more than a presumption of a violation of the said Act, it is unconstitutional. The defendants allege on the other hand that it is well within the powers of Congress delegated to it by the Eighteenth Amendment to the Constitution of the United States to declare the possession of intoxicating liquor to be unlawful and that such legislative declaration contained in the National Prohibition Act is a valid exercise of the legislative power and has a reasonable relation to the enforcement of the constitutional mandate.

For a separate and distinct defense herein, defendants allege:

Fifth. Defendants re-allege and re-affirm as part of this separate and distinct defense each and every allegation contained in paragraphs first to fourth above.

Sixth. Defendants are informed by their attorney and therefore allege that if the complainant is correct in its construction of the National Prohibition Act the implications involved are exceedingly serious and the claim of the complainant, if allowed, would curtail with it as a necessary corollary the right of any ship to transport liquor within the territorial waters of the United States.

Seventh. Defendants are further informed and believe and therefore allege that for two years last past a large and profitable business has been carried on by divers persons with the object and result of importing liquor into this country contrary to law; that the vessels used by such persons are vessels under foreign registry and
 26 such vessels sail from foreign ports with clearance papers showing that they are bound for other foreign ports. The actual destination of such vessels is not the port shown on their clearance papers but some point on the high seas near the coast of the United States from which its liquors are transferred to smaller boats which complete the smuggling and importation of the liquor into the United States. Up to the present time the vigilance of the customs officials in seizing such vessels when they come within the territorial limits of the United States has somewhat mitigated the evils of this traffic but if, as complainant contends

only necessary to put liquors under lock and key to make such transportation legal and foreign vessels can sail our territorial waters at will with cargoes of liquor, the enforcement of the prohibition against the importation of liquors, already difficult, will become practically impossible.

Eighth. The rulings of the Secretary of the Treasury referred to in the bill of complaint have already been used as a cloak to hide smuggling operations and if the doctrine underlying such rulings is declared to be the law as claimed by complainant, defendants verily believe that its use as a cloak for such operations will greatly increase. As an instance of the use of such regulations to hide smuggling defendants allege that on or about January 15, 1920, the British passenger steamship "Harbinger" sailed from Halifax, N. S. for Havana, Cuba, carrying with her a large quantity of intoxicating liquors listed as sea stores. The said vessel came into the port of Portland, Maine, alleging a shortage of coal, and there her liquor was sealed under customs seals. Her Master protested her innocence and claimed the right as a foreign vessel to transport intoxicating liquors as sea stores under seal within the territorial waters of the United States. This right was accorded her under the Treasury rulings until recently in force and on which complainant has relied until now. Being under suspicion, however, the "Harbinger" was convoyed by the coastguard cutter "Ossipee" to Cape Ann whence she entered the port of Boston and thence proceeded without convoy to the neighborhood of New York where she was met by the coastguard cutter "Gresham" which convoyed her to New York. On January 26th, she was convoyed down New York Bay by the coastguard cutter "Manhattan" to Dunham Shipyard, Staten Island. There she remained under customs surveillance until February 6th when the customs seals on the liquors were broken by the crew and an attempt was made to import them into the United States. When such attempt was made the crew of said vessel were arrested. Two have pleaded guilty to a violation of the Prohibition Act and the vessel has been libelled by the Government. After the crew were arrested it became evident that the journey of this vessel down the coast of the United States was not, as alleged and as appeared, because of insufficient coal-carrying space but for the purpose of finding purchasers of the liquor carried as sea stores.

Ninth. Defendants further allege that under the regulations of the Secretary of the Treasury referred to in the complaint herein, customs officers have made no physical inventory of the stores of liquors on any foreign ships either upon their arrival in the ports of the United States or upon their leaving such ports. Permission has been given to remove certain of the liquors under seal for the purposes of rations given to the crews, but no record is kept of the amount of liquor which actually leaves United States ports on foreign vessels, nor in any inventory returned by such foreign vessels of the amount of liquors actually found when seals are broken by the ship's agents after leaving port.

Tenth. Defendants are informed and verily believe that the complainant makes large profits from the sale of intoxicating liquors on the high seas, such profits amounting to many thousand dollars per annum and further allege that loss of such profit is the only definitely ascertainable loss which the complainant will suffer if the National Prohibition Act as interpreted by the ruling of the Attorney General is given full force and effect.

Eleventh. Defendants further allege on information and belief that the sale of intoxicating liquors on the high seas by vessels carrying the American flag ceased with the issuance of the ruling of the Attorney General and is not now carried on. And defendants verily believe that if vessels of foreign registry are by the injunction of this Court facilitated in the sale of liquor on the high seas by being allowed to transport liquor within the territorial waters of the United States, the resultant damage to the American merchant marine will be great and irreparable. Not only will ships of the American merchant marine suffer the loss of revenue which they have hitherto enjoyed from the sale of intoxicating liquors on the high seas and which ships of foreign nations will continue to enjoy if the prayer of the complainant herein is granted, but defendants believe that a large number of passengers who would otherwise travel on American ships and who would travel on American ships if both American ships and foreign ships were placed in the same position in regard to the sale of liquor on the high seas, will, if

foreign ships are placed in an advantageous position in this regard travel on foreign ships and the American ships will lose a large amount of revenue thereby. Defendants are informed and verily believe that the loss of such revenue from the sales of liquor and from passage money in case of a differential treatment giving preference to foreign ships over American ships in the matter of transportation of intoxicating liquors within the territorial waters of the United States, will be sufficient to make it impossible for the American merchant marine to compete profitably with ships of foreign registry. The majority of the American passenger liners operating in the North Atlantic trade, in competition with complainant's and other foreign vessels are owned and operated directly by the United States Government. Any loss of revenue by reason of a differential treatment favorable to foreign ships will fall directly on the United States Government and its taxpayers.

Wherefore, defendants pray that the amended bill of complaint herein be dismissed and that the defendants have such other and further relief as to the Court may seem just and that the defendants recover their costs and disbursements herein.

WILLIAM HAYWARD,
*United States Attorney for the
 Southern District of New York,
 Attorney for Defendants.*

Office & P. O. Address: U. S. Courts & P. O. Bldg., Borough of Manhattan, City of New York.

31 United States District Court, Southern District of New York.

THE CUNARD STEAMSHIP COMPANY, LTD., and ANCHOR LINE
(HENDERSON BROTHERS), LTD.,

against

ANDREW W. MELLON, Secretary of the Treasury of the United
States, et al.

And Ten Other Cases.

These cases come up upon motions by the defendants to dismiss the bills, and by the plaintiffs for final decree upon the answers. The pleadings have been so drawn on both sides as to raise the merits of the controversy, and it is not necessary to set them forth in detail.

The facts are these: Since the enactment of the War Prohibition Act in October, 1919, which was followed in January, 1920, by the Eighteenth Amendment and the National Prohibition Act, it has been the continuous custom of all transatlantic passenger steamers to bring into the Port of New York limited stocks of wines and liquors as part of their sea-stores. This was done with the consent of the public authorities who promulgated regulations recognizing the practice, but providing that, while within the territorial waters of the United States, they should remain intact under seal. The theory on which the authorities proceeded, acting on an opinion at that time given by the Attorney General, was that, as part of the ship's stores, these wines and liquors, if sealed and kept on board, were not to be regarded as brought within the country at all, or as subject to its municipal law, in accordance with the general rule that as respects what happens upon the deck of a foreign ship, the municipal law does not apply, except in cases where the peace of the sovereign is at stake. Later the permission given was further extended to allow the ships to dispense to their crews their customary ration of wine, as was in some cases required by the laws of the country from which they came.

This being the posture of affairs, on May 15, 1922, the Supreme Court decided in the cases of Grogan v. Walker, and Anchor Line v. Aldridge, that the bare transit of liquors across the territory of the United States was transportation within the Eighteenth Amendment. Thereafter the present Attorney-General, after consideration, on October fifth, 1922, rendered an opinion to the Secretary of the Treasury that these decisions covered passenger steamers plying in and out of the ports of this country. The President thereupon publicly announced that after a given date he should proceed to execute the law in accordance with this opinion, and this created the situation out of which these bills arise.

The practice of all steamers has been freely to sell wines and liquors out of these stocks to their passengers on east-bound voyages when once outside the league limit, and to replenish them in Europe

so that they should suffice for a round trip. The stocks in question are therefore carried into the Port, kept there under seal, and carried out again, only for the entertainment of passengers embarking from the United States. Besides the wines and liquors so used the steamers carry a stock for the use of their crews. In the case of the French, Italian and Belgian ships the law of their flag requires them to supply a ration of wine and in these cases it is possible that the ships may not be able to obtain clearance unless they comply with this provision. Furthermore, the use of wines, beers or liquors among the peoples except Americans from whom the crews of all the ships are drawn, is habitual and these beverages are regarded as a necessary part of their ration.

Among the plaintiffs are two lines which sail under the American flag. These the authorities have always treated like the foreign lines; they have freely sold their wines and liquors at sea and brought them into port under the same restrictions and with the same privileges as the rest. They are now, however, subject to the same proposed action by the defendants.

The defendants are not the same in all the suits. In some cases the Secretary of the Treasury is joined, in some the United States Attorney for the Southern District of New York, and in some the Zone Officer, but the Collector of the Port of New York and the local Prohibition Director are defendants in all.

34 Appearances:

Hon. Van Vechten Veedor, for Oceanic Steam Navigation Co. Ltd., Liverpool, Brazil & River Plate Steam Navigation Co., Ltd., United Steamship Co. of Copenhagen, The Royal Mail Steam Packet Co., The Netherlands American Steamship Co. (Holland America Line), and Pacific Steam Navigation Company.

Lucius H. Beers, Esq., for the Cunard Steamship Co., Ltd., and Anchor Line (Henderson Brothers).

Joseph P. Nolan, Esq., for Compagnie Generale Transatlantique.

Reid K. Carr, Esq., for United American Lines, et al.

Cleatus Keating, Esq. and John H. Woolsey, Esq., for International Mercantile Marine and International Navigation Co., Ltd.

William Hayward, Esq., United States Attorney.

And John Holley Clark, Esq., Assistant U. S. Attorney for Defendants in all cases.

LEARNED HAND, D. J.:

It is conceded, and indeed could not be disputed, after *Grogan v. Walker and Anchor Line v. Aldridge*, decided May 15, 1922, that the liquors here in question been a part of the ship cargo, the bills would not lie. It makes no difference that they were not to be broached while carried within the territory of the United States; the carriage would be transportation none the less. But because they are part of the ships' stores, in the sense that that term is generally understood, the plaintiffs argue that they do not fall within the same rule. This argument rests upon two alternative premises, first, that

"transportation" involves a place there, and a person to whom, the goods are to be delivered, and second, that a ship's stores have by long custom been treated as a part of the "furniture," *Brough v. Whitmore*, 4 Term R. 206, or "appurtenances," *The Dundee*, 1 Hagg. Adm. 109, of the ship, which do not without particular mention become subject to the municipal law of the ports into which she enters, any more than the ship herself.

Even if "transportation" were defined to involve some delivery, I do not see how that would help the plaintiffs. These liquors are carried for delivery at sea to the passengers and crew, and when so delivered their transportation ends. There appears to be no significant distinction in the fact that the place of delivery is the ship itself. The passengers, and for that matter, the crew, are not the same person as the owner, and if the passage of title or possession has anything to do with the matter, the title to, and possession of, the bottle or the dram, passes when it is handed to its consumer. The carriage within the limits of the Port of New York is a part of a transit whose purpose from the beginning is that very delivery. The fact that the place and the person are undefined is as irrelevant as it would be if a collier cleared to search out and coal at sea friendly cruisers during war, as happened in 1914.

Therefore, I might admit the plaintiffs' interpretation of the word, if it were necessary. Nevertheless, it seems to me at best very doubtful whether it carries with it any such limitation. The cases in which the plaintiffs rely come only to this, that the jurisdiction of the United States under the interstate commerce clause does not terminate until delivery after a transit across State lines, *Gloucester Ferry Co. v. Pa.*, 114 U. S. 196, *Rhodes v. Iowa*, 170 U. S. 412, *Louisville & Nashville R. R. v. Cook Brewing Co.*, 223 U. S. 70, *Daneiger v. Cooley*, 248 U. S. 319. From this it doesn't follow that the term, "transportation," as used in this statute, implies delivery to another than the person who carries the liquors.

Suppose, for example, a parcel of liquor, made after the Amendment, and carried off to be laid away in a cache. There can be no question, I believe, that two separate crimes would be committed, "manufacture" and "transportation."

Nor does it seem to me that the thirteenth and fourteenth sections of Title II of the Prohibition Act, help the plaintiffs. Under these, carriers are required to mark the consignor's and consignee's names on the outside of all packages. But it does not follow that a regulation like this of one kind of transportation imputes to the word itself any of the conditions which it enacts. In common use transport means to carry about, and I see no reason why it should mean less in Section three. The law clearly intended by immobilizing liquor to make surreptitious traffic in it impossible and policy would as well cover movements which might be incidental to, as these which immediately terminated in, a delivery to someone else. The case of *Street v. Lincoln Safe Deposit Company*, 254 U. S. 88, did not decide anything to the contrary; turned upon the fact that the possession of the liquor in the leased

room and in the house were both lawful, and that the movement from one to the other could not be unlawful. To apply it to the cases at bar is to beg the question, because the lawfulness of the possession here depends upon whether this is transportation under the statute. The steamers have no express warrant of law, as Street

had, for the possession of the liquor. I conclude therefore
37 that the carriage in question is "transportation."

The first point being thus disposed of, I come to the second. It is a very plausible argument to say that ship's stores ought not to fall within the general language of Section three; so plausible indeed that for three years it prevailed with the authorities charged with the enforcement of the statute. Their understanding is not to be ignored in interpreting the law itself, under well-settled canons. Since 1799 it has been recognized in the customs regulations of the United States, (Revised Statutes, Sections 2795, 2796, 2797), that reasonable sea-stores shall not be subject to duty. While they must be manifested and may not be excessive in quantity, as such they are not regarded as entering into the commerce of the country. The plaintiffs say that, therefore, when Section three of the National Prohibition Act forbade generally the transportation of liquors, it must be read in the light of this statute and the language of and that what is not within the United States for the purposes of customs ought not to be so for purposes of prohibition. In addition they urge that under the maritime law it is held that for most purposes sea-stores will be treated as a part of the ship herself. If so, it is not regarded as being within the country, neither ought the accessories to her voyage.

It is of course true that one should not interpret a statute, and let alone of all a constitution, with the text in one hand and a dictionary in the other, and so courts have often held in similar cases to the effect. *Brown v. Duchesne*, 19 How. 183, *Taylor v. U. S.*, 207 U. S. 121, *Scharrenberg v. Dollar Steamship Co.*, 245 U. S. 122. Nevertheless everyone must agree that the question is no more than one of interpretation, for in the cases at bar Congress certainly might, if it

38 chose, prevent the entrance of any liquor whatever within the borders of the United States, not only under the Eighteenth Amendment, but indeed under its power over foreign commerce. It is a question, therefore, of the implied limitations upon words which literally in any event cover the case.

Grogan v. Walker, *supra*, and *Anchor Line v. Aldridge*, *supra*, plainly meant to adopt a broad canon for the interpretation of the National Prohibition Act, following the admonition at the end of the first paragraph of Section three. Effecting a revolutionary change in the habits of the nation, the statute is to be understood as thorough-going in its intent to accomplish the results desired. It did not specify the extent of its application in detail, but left it to be gathered from its occasion, and the generality of the words used. It intended to exercise once for all the complete power of Congress under the Amendment, and its very want of particularity is a good index that it meant to cover what it could. For

39 reason it is to be distinguished from earlier local acts of the same kind, as for example, the Alaskan Prohibition Act, upon the language of Section twenty-nine on which the plaintiffs rely. Indeed, specification in the statute might have defeated its ends, on the theory that what was omitted must be taken as excluded. At least I cannot read the two decisions cited without supposing that it was in the foregoing sense that the Supreme Court meant section three to be read.

Starting with that premise there appears to me more reason for supposing that section to cover these ship's stores than the transportation there before the court. I say this because it was necessary to overrule at least as much, if not more, to reach the result in those decisions, and especially because there were in them much stronger reasons to imply an exception from the literal language of the act. First, in those cases there was a statute which gave as much right of transit across the territory of the United States as here, and that statute had the support of a treaty negotiated only five years later, and assumed in the opinion of Mr. Justice Holmes to be still in force. Assuming that the customs laws give a positive right to enter ship's stores into the United States, a position in itself very doubtful, since in form it only exempted them from customs duties, at least it must be conceded that the statute, old as it is, represented only the policy, and not the promise, of the nation. It is true that the custom in maritime affairs is of long standing to treat such stores as a part of the ship, but balancing that consideration with the implication against the repeal of a treaty, I cannot help believing that the second is the more weighty. At best it can only be said that the cases are on a parity in this regard.

40 However, the motives for positively assuming that such stores must be considered as included within Section three appear to me stronger than any which could apply to a bare carriage across our territory. It is true that all such reasoning as to legislative motives is speculative, but that vice, if it be one, is of the plaintiffs' making, because the language of the statute taken in its natural meaning is general and covers the case of stores, as of other merchandise. It is the plaintiffs who insist upon implying limitations on that meaning, because of the supposed intent of Congress. Hence, therefore, I am asked to have recourse to implications. I cannot avoid some speculation as to what Congress would probably have said, had it been faced with the actual situation which now arises. In the decisions cited there was no conceivable danger in the transit of liquor across the United States except the chance of its escape. It is true that as suggested in *Grogan v. Walker*, supra, the provision against export may have been intended to prevent the use of stimulants outside the United States and so far as it was, the argument applies with stronger force to the cases at bar. But taken substantially, the only evil which the transit could accomplish was that some of the liquor should not complete its passage. In the cases at bar the danger of an escape is equally present, not perhaps in the case of these plaintiffs, but I cannot regard them alone. Less responsible owners may not be as scrupulous, and the laws runs for

all. The distinction which puts these cases within the law with much greater certainty is the purpose for which the liquors are brought and kept here. Ignoring for the moment the crews, all of the
 41 stocks are avowedly intended for the consumption of those who are now within the United States, of which a substantial part are residents or citizens, the very persons whom it was the whole purpose of the Amendment to prevent drinking liquors.

Naturally I have nothing to say about the wisdom of the Amendment or the law, but, wise or not, one thing is clear, that a drink of whisky is as hurtful to health and morals outside as inside Ambrose Light. It appears to me inconceivable, when one is discussing the implied intent of Congress, that a statute cast in such sweeping terms should be read as indifferent to open preparations within the United States for the gratification by its citizens of exactly those appetites which it was the avowed intent of the statute altogether to deny. Nor do I believe that anyone would hesitate to think so who did not already repudiate the whole reform. If, for example, we were to substitute cocaine or opium for alcohol, I can scarcely think there could be any disinterested difference of opinion. Suppose it were the habit of Chinese vessels to bring to our ports among their stores a proper supply of morphine and opium with the avowed purpose of dispensing it freely to passengers from the United States as soon as they cleared the league limit. Could it be seriously argued that a constitutional amendment and a statute in broad language designed to prevent citizens from using this drug did not cover so palpable a means of nullifying the very purpose of the law? The illustration is extreme only to those who can see no parity between the evils of opium and alcohol. But a judge cannot take any position on that question; it must be enough for him that each is forbidden.

42 It is indeed different with so much of the stocks as are kept for the crews, and a much stronger argument can be made for the legality of their carriage, though these also seem to me to fall within the decisions I have so often cited. However, the question is really irrelevant as these cases are presented. The plaintiffs base their argument on the improbability that a statute of such general words should have meant to cover sea stores. This turn rests upon the unlikelihood that what has been for so long treated as not subject to municipal law should all at once become so. But the argument breaks down as soon as it appears that the stores as a whole cannot fairly be excluded. To say that the section covers some of such stores, but not all, would be to admit that as such they were not excluded by implication. What then becomes of the argument? There are indeed cogent reasons why these might be excepted, but these are not because they are ships' stores. Congress might indeed determine to make an exception in their favor, as to the validity of which I have nothing to say, but I do not think that a judge can imply the exception because of the unquestioned difficulties which its absence leaves the plaintiffs. There is a narrow limit to judicial redrafting of statutes. Indeed, the argument was not suggested at the bar that passengers' refreshment and crews' rations

stood in different positions. Probably none was intended, and I mention it only against the possibility that it might be taken later.

Cases like *Brown v. Duchesne*, supra, *Taylor v. U. S.*, supra, and *Scharrenberg v. U. S.*, supra, are all indeed in point. They illustrate the extent to which seamen and ships are regarded as enclaves from the municipal law. But they were all judicial exceptions by implication out of the words of a statute, and they therefore depended upon how far in the circumstances of each case it was improbable that "the natural meaning of the words expressed an altogether probable intent." Were it not for the declaration of the Supreme Court in what I regard as far weaker circumstances, that the literal meaning of Section three accords with the probable intent, they might embarrass my conclusion. As it is, they do not, for in such matters each case is *sui generis*, and I have only to follow any decision which is apt to the statute under consideration. For these reasons I hold that the threatened action of the defendants is legal and that the bills must be dismissed.

It is obvious that this ruling disposes of the cases of the American ships as well as of the foreign. The American bills contain no allegations that the defendants intend to prosecute them for the sale of liquors upon the high seas, as for example on westward voyages. It is true that the prayers for relief do include so much, but prayers without allegations are ineffective. I do not therefore find it necessary to consider the legality of any sales of liquor under the American flag on the high seas, assuming no liquor is brought within our territorial limits. It was my understanding at the argument that the territoriality of an American ship at sea was discussed only against the possibility that I should hold that it was not illegal merely to carry liquors into and out of the Port.

I suppose that the question of a temporary restraining order pending the appeal is of a good deal more consequence to the plaintiffs than anything I may think about the law. The power under the Seventy-fourth Rule to grant such an order is undoubted, notwithstanding a dismissal of the bill, *Merrimac River Savings Bank v. City of Clay Center*, 219 U. S. 527, *Stafford v. King*, 90 Fed. R. 136 (C. C. A.). Moreover, the whole thing rests in the discretion of the trial judge. The question is how far the absence of any protection to the losing party will expose him to serious and irreparable damage, if in the end he wins, without imposing an equal damage upon the other party, if he loses his decree. Like all such matters, it depends upon a balance between the two, and I must now assume that the chances of success are not equal.

On the one hand the plaintiffs are in unquestionable embarrassment. They must take off their stocks of liquor now in port, and if they bring any westward with them they must calculate with some anxiety on the consuming capacities of their passengers or take the chances of a seizure of the residue in New York. Nevertheless so far as the loss of the liquors themselves is concerned the damage cannot be said to be irreparable. These must be condemned before they can be forfeited, and in the present state of the calendars the cases at bar will be finally determined long before such libels can be tried. If I

am wrong, the plaintiffs will get back their property after a delay which I cannot regard as an irreparable damage. If I am right, it would be obviously improper by staying the defendants to
 45 allow the liquor to escape a seizure to which the United States is entitled under its laws. With the conduct of any such proceedings I have nothing to do. It may be that the long acquiescence of the authorities in the practices here in question will moderate the ultimate penalty of confiscation; I must assume that the plaintiffs will receive such consideration as the law permits, but I ought not to protect them against proceedings to which they by hypothesis would be legally subject.

However, I do not understand that they are so much concerned over the possible loss of existing stocks as over the right meanwhile to carry them in and out as a means of selling them at sea and serving them as part of the crews' ration. If the ration is cut off, some in any case of the plaintiffs will be in a serious dilemma between two conflicting laws. The others will probably have a good deal of trouble and expense in securing seamen who will sign on upon a "dry" ship. On the other hand, foreign crews are scarcely within the dominant purpose of the Eighteenth Amendment. It appears to me just on a fair balance of the relative advantages to stay the enforcement of the law against stocks of wine and liquor
 46 necessary for crews' rations, if honestly kept and dispensed for that purpose alone.

As to the maintenance of passengers' stocks the case is otherwise. The plaintiffs are all upon the same competitive footing inter se and only claim to fear the competition of Canadian lines. How serious that may be no one can tell, but certainly it will be felt much less during the next two or three months than at another season. In any event, on the balance of advantage I ought not to allow it. It is easy to say, if one does not take seriously the opinion behind the Amendment, that the United States will not suffer by the continuance of the status quo. But it is impossible to say so, if one does. I repeat what I said in *Dryfoos v. Edwards*, filed October 10, 1919, on a similar occasion. The suspension of a law of the United States, especially a law in execution of a constitutional amendment, is of itself an irreparable injury which no judge has the right to ignore. The public purposes, which the law was intended to execute, have behind them the deep convictions of thousands of persons whose will should not be thwarted in what they conceive to be for the public good. No reparation is possible if it is.

Furthermore, it is at best a delicate matter for a judge to tie the hands of other public officers in the execution of their duties as they understand them, and the books are full of admonitions against doing so, except in a very clear case. Here not only is the case not clear, but, so far as I can judge, the plaintiffs have no case. Therefore I will go no further than to issue an injunction against interfering with the carriage of a stock necessary for the crews' rations on the east-bound voyage. The plaintiffs must each give a bond in
 47 the sum of twenty-five thousand dollars, conditional against the use of such stocks for any other purpose than as crews' rations.

Bill dismissed with costs; injunctions as indicated pending an appeal if the same be taken at once. Settle orders on notice.

— — —, D. J.

October 23, 1922.

48 At a Stated Term of the District Court of the United States for the Southern District of New York held in the Court Rooms thereof, at the Post Office Building, in the Borough of Manhattan, City of New York, on the — day of October, 1922.

Present: Honorable Learned Hand, District Judge.

In Equity.

COMPAGNIE GENERALE TRANSATLANTIQUE, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States;
Henry C. Stuart, Acting Collector of Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Defendants.

Order Dismissing Complaint.

This cause came on to be heard at this term upon motions by the defendants to dismiss the amended bill of complaint and by the plaintiffs for a final decree in their favor on the pleadings, and was argued by counsel; and thereupon, upon consideration thereof, it was

Ordered, adjudged and decreed that the amended bill of complaint herein be dismissed and defendants have judgment against the complainants for their costs to be taxed, and it is further

49 Ordered, adjudged and decree that until final hearing of this cause in the Supreme Court of the United States and the entry of an order or decree on the mandate of that Court, the defendants, their servants, agents and subordinates, be and they hereby are stayed and restrained from seizing or interfering with the possession or carriage by complainants herein of a stock of liquors customary for the rations of the crews of complainants' vessels upon eastbound voyages, upon the filing of a bond in the penal sum of twenty-five thousand dollars (\$25,000), conditioned against the gift, issuance or sale of such stock of liquors by complainants otherwise than as crews' rations to the crews of complainants' vessels; and it is further

Ordered, adjudged and decreed that if complainants shall fail to take an appeal herein to the Supreme Court of the United States within five days from the entry hereof, or to move for preference on next motion day, the defendants may move herein to vacate the injunction granted above.

LEARNED HAND,
U. S. D. J.

- 50 In the District Court of the United States for the Southern District of New York.

COMPAGNIE GENERALE TRANSATLANTIQUE, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States; Henry C. Stuart, Acting Collector of Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Defendants.

The complainant above named, the Compagnie Generale Transatlantique, a Corporation conceiving itself aggrieved by the order dismissing complaint made and entered in the above entitled cause on the 24th day of October, 1922, does hereby appeal from such order to the Supreme Court of the United States for the reasons specified in the assignments of errors which is filed herewith, from which it appears that the case is appealable directly from this court to the said Supreme Court of the United States under §238 of the Judicial Code and, said, the Compagnie Generale Transatlantique, prays that it be allowed this appeal and that a transcript of the

- 51 record, papers and proceedings, upon which said order dismissing complaint was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, New York, October 24th, 1922.

JOSEPH P. NOLAN,
Solicitor for Complainant.

25 Broad Street, New York City.

Appeal allowed.
LEARNED HAND.

- 52 United States District Court, Southern District of New York

COMPAGNIE GENERALE TRANSATLANTIQUE, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States; Henry C. Stuart, Acting Collector of Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Defendants.

Now comes the Compagnie Generale Transatlantique, complainant and appellant, by Joseph P. Nolan its attorney, and makes the following assignments of error:

- First. The Court erred in dismissing the bill of complaint herein.
Second. The Court erred in denying the petition for an injunction

Third. The Court erred in holding that the Eighteenth Amendment to the Constitution of the United States prohibits a foreign ship from keeping on board while on the territorial waters of the United States intoxicating beverages constituting part of the customary sea stores of such — lawfully acquired by it in a foreign jurisdiction and on board solely for the lawful use and consumption thereof on board said ship outside of the jurisdiction of the United States.

Fourth. The Court erred in holding that the National Prohibition Act prohibits a foreign ship from keeping on board, while on the territorial waters of the United States, intoxicating beverages constituting part of the customary sea stores of such ship lawfully acquired by it in a foreign jurisdiction and on board solely for the lawful use and consumption thereof on board said ship outside of the jurisdiction of the United States.

Fifth. The Court erred in holding that the Eighteenth Amendment and the National Prohibition Act prohibit a foreign ship from having on board as sea stores while on the territorial waters of the United States such intoxicating beverages as are required for the crew as part of their customary rations by the law of the ship's flag or by the law of the nation to or from whose ports the vessel is trading when said sea stores were lawfully acquired and taken on board for such purpose in a foreign country.

Sixth. The Court erred in holding that the Eighteenth Amendment and the National Prohibition Act prohibit a foreign ship from having on board as sea stores while on the territorial waters of the United States such intoxicating beverages as are required for the passengers as part of their customary rations by the law of the ship's flag or by the law of the nation to or from whose ports the vessel is trading when said sea stores were lawfully acquired and taken on board for such purpose in a foreign country.

Seventh. That the National Prohibition Act as construed and applied by the District Court is unconstitutional and void because enforcement thereof with respect to sea stores on the complainant's vessels would deprive the complainant of its property and subject it to penalties without due process of law.

Eighth. The Court erred in holding that the keeping on board of complainant's vessels of intoxicating beverages while said vessels are on the territorial waters of the United States in the circumstances mentioned in the "third" and "fourth" assignments of error constitutes a transportation of the same within the prohibition of the Eighteenth Amendment and the National Prohibition Act.

Ninth. The Court erred in holding that the keeping on board of complainant's vessels of intoxicating beverages while said vessels are on the territorial waters of the United States in the circumstances mentioned in the "Fifth" and "Sixth" assignments of error constitutes

a transportation of the same within the prohibition of the Eighteenth Amendment and the National Prohibition Act.

Tenth. The Court erred in holding that the possession within the territorial waters of the United States of intoxicating beverages in the circumstances mentioned in the "Third," "Fourth,"
 55 "Fifth" and "Sixth" assignments of error is prohibited by the Eighteenth Amendment and the National Prohibition Act.

Eleventh. The Court erred in refusing to hold that the interpretation of the National Prohibition Act mentioned in the "Ninth" assignment of error was unconstitutional and invalid and not within the powers conferred by Congress by the Constitution.

Twelfth. That the National Prohibition Act as construed and applied by the District Court is unconstitutional and void because it attempts to exercise jurisdiction over public ships carrying the flag of the Republic of France, and the mails of the Republic of France.

Thirteenth. That the National Prohibition Act, as construed and applied by the District Court is unconstitutional and void because it interferes with, and is a violation of complainant's rights under existing treaties between the United States and France.

JOSEPH P. NOLAN,
Solicitor for Complainant.

56 By the Honorable Learned Hand, One of the Judges of the United States District Court, for the Southern District of New York, in the Second Circuit.

To Andrew W. Mellon, Secretary of the Treasury of the United States; Henry C. Stuart, Acting Collector of Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court, to be holden in the City of Washington, District of Columbia, on the — day of —, 1922, pursuant to the appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein the Compagnie Generale Transatlantique is complainant and appellee and you are defendants appellees, to show cause, if any there be, why the order dismissing complaint in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named the — day of October, in the year of our Lord One Thousand Nine Hundred and Twenty-two, and of the Independence of the United States the One Hundred and Forty-sixth.

57

LEARNED HAND,
United States District Judge

& 59 *Stipulation on Appeal Record.*

United States District Court, Southern District of New York.

Eq. 25—14.

COMPAGNIE GENERALE TRANSATLANTIQUE, Complainant,

vs.

ANDREW W. MELLON, Secretary of the Treasury of the United States;
Henry C. Stuart, Acting Collector of Customs for the Port of
New York, and Ralph A. Day, Federal Prohibition Director for
the State of New York, Defendants.

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated Oct. 24, 1922.

JOSEPH P. NOLAN,
Attorney for Complainant.
WM. HAYWARD,
Attorney for Defendants.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

COMPAGNIE GENERALE TRANSATLANTIQUE, Complainant,

vs.

ANDREW W. MELLON, Secretary of the Treasury of the United States,
et al., Defendants.

Alexander Gilchrist, Jr., Clerk of the District Court of the
United States of America for the Southern District of New York, do
hereby Certify that the foregoing is a correct transcript of the record
of the said District Court in the above-entitled matter as agreed on
by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this twenty-fourth day of October, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the said United States the one hundred and forty-seventh.

[Seal of the District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk.

Endorsed on cover: File No. 29,212. S. New York D. C. U. S. Term No. 662. Compagnie Generale Transatlantique, appellant, vs. Andrew W. Mellon, Secretary of the Treasury of the United States et al. Filed October 25th, 1922. File No. 29,212.

(7662)